

Michigan Department of Attorney General

Open Meetings & Freedom of
Information Acts Seminar

Michigan's Open Meetings Act

Act 267 of 1976

The basic intent of the Open Meetings Act is to strengthen the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings.

Michigan's Open Meetings Act

Act 267 of 1976

Sec. 2(a)

“‘Public body’ means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority to perform a governmental or proprietary function...”

Michigan's Open Meetings Act

Act 267 of 1976

Sec. 3(1)

“All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act.”

Michigan's Open Meetings Act

Act 267 of 1976

Sec. 3(2)

“All decisions of a public body shall be made at a meeting open to the public.”

Sec. 3(3)

“All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.”

Michigan's Open Meetings Act

Act 267 of 1976

Sec. 5(1)

“A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.”

Sec. 3(5)

“A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body.”

Michigan's Open Meetings Act

Act 267 of 1976

- 1986 PA 269 amended the act, allowing recording devices at open meetings.

Sec. 3(1)

“The right of a person to attend a meeting of a public body includes the right to tape record, to videotape, to broadcast live on radio, and telecast live on television the proceedings of a public body at a public meeting.”

Michigan's Open Meetings Act

Exceptions and Exclusions

Sec. 3(7)

This act does not apply to public bodies when deliberating the merits of a case. Examples:

- Worker's Compensation Appeal Board.
- Employment Security Board of Review.
- State Tenure Commission.
- An arbitrator appointed by the Employment Relations Commission.
- Michigan Public Service Commission.

Michigan's Open Meetings Act

Exceptions & Exclusions

Sec. 8

A public body may meet in closed session only for permissible purposes.

Sec. 7(1)

Depending on the permissible purpose, either a 2/3 roll call vote or a majority vote of members elected or appointed and serving shall be required to call a closed session.

Michigan's Open Meetings Act

Exceptions & Exclusions

- Permissible purposes for closed sessions include:
 - To consider the purchase of real estate.
 - To consult with the public body's attorney regarding trial or settlement strategy in connection with specific pending litigation.
 - To review the contents of application for employment if the candidate requests that the application remain confidential.
 - To consider material exempt from discussion or disclosure by state or federal statute.

Michigan's Open Meetings Act

Exceptions & Exclusions

- Under Sec. 7(1), a majority vote is required to hold a closed session in certain instances, including:
 - Dismissal, suspension, or disciplining of a public officer or employee if the public officer or employee requests a closed hearing.
 - Dismissal, suspension, or disciplining of a student if the student's parent or guardian requests a closed hearing.

Michigan's Open Meetings Act

Exceptions & Exclusions

- Sec. 7(1) exceptions, (cont.)
 - For collective bargaining negotiation sessions.
 - For partisan caucuses of the state Legislature.

Michigan's Open Meetings Act

Violations & Penalties

Sec. 10(2)

“A decision made by a public body may be invalidated if the public body has not complied with...section 3(1), (2), and (3)...and the court finds that the noncompliance...has impaired the rights of the public under this act.”

Michigan's Open Meetings Act

Violations & Penalties

Sec. 10(5)

“[W]here an action has been initiated to invalidate a decision of a public body...the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act.”

Michigan's Open Meetings Act

Violations & Penalties

- Litigation which seeks to challenge a decision of a public body must be started within 60 days of the approved minutes, or within 30 days for decisions involving, for example, the approval of contracts, the acceptance of bids, or the issuance of bonds.
- An action for injunctive relief must be filed within 180 days of the alleged violation.

Michigan's Open Meetings Act

Violations & Penalties

Sec. 11

- The act allows a person to sue and collect damages, and establishes criminal penalties for willful violations of the act.
- If a suit is successful, the person shall be awarded court costs and *actual* attorney fees.

Michigan's Open Meetings Act

Violations & Penalties

Sec. 12(1)

“A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.”

Sec. 13(1)

“A public official who intentionally violates this act shall be personally liable...for actual and exemplary damages of not more than \$500.00...to a person or group of persons bringing the action.”

Michigan's Freedom of Information Act

Act 442 of 1976

“It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials...The people shall be informed so that they may fully participate in the democratic process.”

Michigan's Freedom of Information Act

General Provisions

“An act to provide for public access to certain public records of public bodies...”

Sec. 2(d)

The act applies to all public bodies at the state and local levels, but does not include:

- The Governor, Lieutenant Governor, Executive Office staff and employees.
- The Judiciary.
- Individual Legislators.

Michigan's Freedom of Information Act

General Provisions

Sec. 2(e)

“‘Public record’ means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function...”

This act separates public records into two classes: (i) those that are exempt under section 13 and (ii) those that are not exempt under section 13 and which are subject to disclosure.

Michigan's Freedom of Information Act

General Provisions

Sec. 11(1)

A state agency shall publish and make available to the public all of the following:

- Final orders or decisions in contested cases.
- Promulgated rules.
- Other written statements which implement or interpret laws, rules, or policy, including but not limited to, guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

Michigan's Freedom of Information Act

General Provisions

Sec. 5(1)

Requests must be made in writing.

Sec. 5(2)

“Unless otherwise agreed to in writing by the person making the request, a public body shall respond to a request for a public record within five business days...by doing 1 of the following:”

Michigan's Freedom of Information Act

General Provisions

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying the request in part.
- Issue a notice extending for not more than 10 business days the period in which to respond.

Michigan's Freedom of Information Act

General Provisions

Sec. 4(1)

“A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record.”

- Limited to actual mailing, duplication, and labor costs.
- Fee may be waived or reduced if the public body determines that the waiver or reduction is in the public interest.
- If the fee exceeds \$50.00, a deposit of not more than half may be collected.

Michigan's Freedom of Information Act

Exemptions and Exceptions

Sec. 13(1)

- 25 exemptions from disclosure.
- Four general categories:

Michigan's Freedom of Information Act

Categories of Exemption

1. Records of a personal nature, the release of which would constitute a clearly unwarranted invasion of an individual's privacy.
2. Records the release of which would impair the safety or security of persons or property or the safe and efficient operation of a custodial or penal institution.
3. Records exempted on the basis of public policy.
4. Records exempted by other statutes.

Michigan's Freedom of Information Act

Violations and Penalties

Sec. 10

- If a request is denied, the act allows the requesting person to appeal the decision to the head of the public body and/or petition the court to compel disclosure.
- If the requesting person's lawsuit is successful, the act mandates an award of *reasonable* attorney's fees and costs.
- If the court determines that a public body "arbitrarily and capriciously" violated the act, it shall award \$500.00 in punitive damages to the requesting person.

OMA, FOIA & More information

- Compiled Attorney General opinions can be accessed on the department website:

www.michigan.gov/ag